

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRR No. 3955 of 2015
Date of decision : 16.03.2016

Kalam Khan & anr.Petitioners

V/s

State of Punjab & ors.Respondents

BEFORE : HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. A.S. Khinda, Advocate for the petitioners.
Mr. Ankur Jain, AAG Punjab.
Mr. D.S. Nigha, Advocate for respondents no. 2 & 3.

RAJAN GUPTA J.

Petitioners had been convicted by the Sub Divisional Judicial Magistrate, Phagwara under sections 452, 324 & 324 read with section 34 IPC was sentenced to undergo imprisonment as under:-

Offence	Sentence
452 IPC	To undergo R.I. for 03 years and to pay a fine of ₹500/- each and in default thereof to further undergo R.I. for seven days.
324 IPC	To undergo R.I. for a period of 1½ years.
324/34 IPC	To undergo R.I. for a period of 1½ years.

All the sentences were ordered to run concurrently.

Petitioners preferred appeal before Additional Sessions Judge, Kapurthala against the judgment of their conviction/sentence. Vide judgment dated 11.08.2014, same was dismissed. Feeling aggrieved against the judgments of both the courts below, petitioners have approached this court through the instant Criminal Revision.

Learned counsel for the petitioners at the outset states that he is limiting his prayer only to the extent of reduction in the sentence awarded and does not assail the judgment of conviction. He states that he is conscious that scope in the revision is very limited as evidence of the witnesses cannot be re-appreciated or re-evaluated.

Learned State counsel, on the other hand submits that in case conviction of petitioners is maintained, the court may reduce the sentence as deemed appropriate in the circumstances of the case.

I have heard learned counsel for both the sides.

Briefly, the prosecution case runs thus:

On the intervening night of 19/20.04.2007, respondent no. 3 alongwith his father was present in his house. At about 1.00 a.m., they heard a noise in the court yard. When they woke up, they saw accused Kalam, Munna armed with knife, accused Farman armed with stick along with two/three other accused in their court yard of their house. Accused Farman exhorted other accused to caught hold of them. At this stage, accused Kalam gave two blows with his knife towards father of the complainant which hit him on below the chest and near the navel. Accused Munna gave two blows with knife which also hit the father of the complainant on the right side of the chin and other blow hit on the right elbow. When complainant came forward to rescue his father, he was given fist blows by the accused. On raising hue and cry, all the accused ran away. They were later taken to Civil hospital, Phagwara for treatment where respondent no. 3 was given first aid and his father

(respondent no. 2) was referred to Civil hospital, Jalandhar. On this

statement, FIR was registered by the police. After completion of investigation, challan against the accused was presented in the trial court.

Finding prima facie case under sections 148, 452, 324 read with section 149 IPC charge was framed against the accused/petitioners, to which they pleaded not guilty and claimed trial.

To substantiate its case against the accused, the prosecution examined as many as five witnesses.

The statement of the accused under Section 313 Cr.P.C. was recorded, wherein all the incriminating evidence available on record was put to them. They refuted the incriminating circumstances and pleaded false implication.

On the basis of the evidence on record, learned trial court held the petitioners guilty of the charges under sections 452, 324 and 324 read with section 34 IPC and sentenced them as already indicated above. The appeal filed against the said judgment was also dismissed by the learned Additional Sessions Judge, Kapurthala.

On perusal of the judgments of both the courts below, I am of the considered view that the trial court has rightly appreciated the evidence on record while holding the petitioners guilty of the charge framed against them. The appellate court has also rightly dismissed the appeal. There is no infirmity or illegality in the findings given by both the courts below. The conviction of the petitioners is, thus, affirmed.

Even counsel for the petitioners, during the course of arguments, has not assailed the judgment of conviction. He has,

however, pleaded for reduction in the quantum of sentence on the ground that the petitioners are poor persons and have old parents and small children to look after. He has stated that he is conscious that the scope in revision is very limited as evidence of the witnesses cannot be re-appreciated and re-evaluated. He further submits that parties have already settled the matter. Affidavit of Mohammad Hadish (respondent no. 3) son of Mohd. Mian has been filed in this regard. Besides, parties are stated to be related to each other.

Learned State counsel has placed on record affidavits of Paramjit Singh, Superintendent Central Jail, Jalandhar at Kapurthala. He has referred to same and submits that out of substantive sentence of three years awarded to petitioners, petitioner no. 1-Kalam Khan has already undergone 1 year, 1 month and 11 days of actual custody whereas petitioner no. 2 Mohammad Munna has undergone 07 months and 13 days of actual custody as on 15.03.2016.

Keeping in view the facts and circumstances of the case, it is directed that the sentence awarded to the petitioners shall be reduced to the period already undergone by them. Ordered accordingly.

The amount of fine if not already paid shall be deposited within one month from the date of receipt of certified copy of this order. However, in case fine is not deposited within the stipulated period, the modification in quantum of sentence shall stand withdrawn and the petitioners shall undergo the remaining period of sentence as awarded by the trial court. Except with modification in

the quantum of sentence, as indicated herein above, the revision petition is dismissed.

March 16, 2016

Ajay

(RAJAN GUPTA)
JUDGE